IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO. 1 OF 2003

Israr Hussein Mumtaz Jariwala .. Petitioner

versus

Treasurer of Charitable Endowments

and others .. Respondents

...

Ms.Hetal Patel for the petitioner.

None for the respondents.

CORAM : D.G. KARNIK, J

DATED : 18th December 2006

P.C.:

1. Heard counsel for the revision petitioner.

2. This revision petition at the instance of the obstructionist is directed against the order dated 16th

April 2002 passed by the appellate bench of the Small Causes Court Mumbai dismissing his appeal against the order of the trial Judge for removal of his obstruction.

3. The respondent no.1 is the owner and landlord of the suit premises. Respondent filed an ejectment suit bearing EA no.478 of 1973 against the tenants Abdul Moulana and P.M.S. Nabi. It was alleged that they were allowed to use the suit premises by reason of their being in the employment and as they were liable to be evicted as they had ceased to be in the employment. An ex-parte decree was passed on 20th February 1974, which was put in execution in July, 1974. Mr.S.B. Jabbar and Mr. S.M. Bashiruddin (who are hereinafter referred to as the first set of obstructionist) resisted the execution of the decree. Respondent no.1 took out obstructionist notice no. 97 of 1988 against the first set of obstructionist. The said notice was made absolute ex-parte. However ex-parte order was set aside and possession was restored to the first set of obstructionist. The matter was carried to this Court wherein S.A. Jabbar gave an undertaking that he would not induct any third person nor part with the possession of the suit premises till the final disposal of the obstructionist notice. Thereafter, the obstructionist notice taken out by the respondent

no.1 for removal of the obstruction of the first set of obstructionist was heard and was made absolute by an order dated 28th February 1984. However, when the warrant for possession was issued, the second set of obstructionist i.e. present petitioner objected to the execution of the decree. The first respondent took out a proceedings for the removal of the obstruction of the petitioner. After hearing the petitioner and after considering the evidence before it, the trial court came to the conclusion that the petitioner did not prove his exclusive possession of the suit premises. The trial court therefore directed removal of the obstruction of the petitioner by an order dated 14th and 15th November 2000.

4. Aggrieved by the order of the trial court dated 14th and 15th November 2000 for removal of the obstruction, petitioner filed appeal before the appellate bench of the Small Causes Court. The appellate bench held that the petitioner had not proved that he was lawful tenant in the suit premises and was protected by the provisions of the Bombay Rent Act as contended by him. The appellate bench therefore held that his obstruction was liable to be removed and the respondents were entitled to the mandatory injunction for removal of

the obstruction.

5. Learned counsel for the petitioner is unable to show any error in the decision of the trial court as well as in the appellate court. She was unable to point out any evidence to show that the petitioner was a lawful tenant or had any independent right in the suit premises. She was unable to point out any perversity in the finding of fact concurrently recorded by the two courts below.

6. In view of this, there is no merit in the revision application which is hereby dismissed.

(D.G. KARNIK, J)